National Football League Players Association, Inc. et al v. Comercial Lt. Baroda S.A. et al Doc. 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION, INC., and NATIONAL FOOTBALL LEAGUE PLAYERS INCORPORATED, Plaintiffs,	)	Index. No: 07 Civ. 640
-against-	)	**COMPLAINT**
	)	ECF CASE
COMERCIAL LT BARODA S.A. d/b/a BETUS, COMMERCIAL L.T. BARODA (CANADA) LTÉE d/b/a BETUS, and ANGELCITI ENTERTAINMENT, INC. Defendants.	)	JURY TRIAL DEMANDED

Plaintiffs National Football League Players Association, Inc. ("NFLPA") and National Football League Players Incorporated ("PLAYERS INC") (collectively, "Plaintiffs"), by their attorneys Weil, Gotshal & Manges LLP, for their complaint against Defendants Comercial LT Baroda S.A. d/b/a/ BetUS, Commercial L.T. Baroda (Canada) Ltée d/b/a BetUS (collectively, "BetUS"), and AngelCiti Entertainment, Inc. ("AngelCiti") (collectively, "Defendants"), allege as follows:

PRELIMINARY STATEMENT

1. BetUS operates a gambling website located at www.betus.com. Although BetUS is licensed and registered in Canada and Costa Rica and purportedly conducts its business within these jurisdictions, it specifically targets United States residents, including those within this District, through a range of advertising and promotional information. Many of these marketing materials "plug" the BetUS "American sportsbook," which, among other things, solicits bets on the outcome of National Football

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League football games. See BetUS Corporate Brochure, annexed hereto as Exhibit A, at 1.

2. Upon information and belief, AngelCiti is an online casino software licensor and gaming administrator whose executive officers control BetUS. Through BetUS, AngelCiti is able to utilize space in Canada to house its servers and is provided with essential telephone, bandwidth, and licensing services. AngelCiti itself admits that its operations are dependent upon the ongoing success and viability of BetUS.

3. To promote the sportsbook feature of their gambling enterprises, Defendants make extensive, unauthorized use of photographs, names, and likenesses ("Images") of several professional football players in the National Football League ("NFL Players") on the BetUS website and in their marketing materials.

4. These activities infringe upon the NFL Players' statutory right of privacy. Indeed, BetUS and AngelCiti are attempting to capitalize on the enormous goodwill and reputation associated with NFL Players and have created the false impression that NFL Players sponsor, approve of, endorse, or are otherwise affiliated with BetUS and AngelCiti and their services, goods, and promotions. Defendants' violations are particularly flagrant and galling given the NFL's and NFLPA's strong anti-gambling policies that were adopted to preserve the integrity of the game.

5. BetUS and AngelCiti are both aware that their conduct is unlawful. Nonetheless, they have failed to respond to demands that they cease their violations, forcing Plaintiffs to initiate this lawsuit.

THE PARTIES

7. Plaintiff NFLPA is a Virginia corporation with its principal place of business at 2021 L Street, N.W., 6th Floor, Washington, D.C., 20036. NFLPA is an incorporated non-profit association that acts as the exclusive collective-bargaining representative for NFL Players.

8. Plaintiff PLAYERS INC is a Virginia corporation with its principal place of business at 2021 L Street, N.W., 5th Floor, Washington, D.C., 20036. PLAYERS INC is a for-profit subsidiary of the NFLPA and, among other things, is engaged in the business of licensing intellectual property rights of current and/or former NFL Players.

9. Upon information and belief, Defendant Comercial LT Baroda S.A. d/b/a BetUS is a corporation licensed to do business in Costa Rica with its principal office located at Oficentro Ejecutivo Sabana Sur, Edificio 2, Piso 3, San Jose, Costa Rica.

10. Upon information and belief, Defendant Commercial L.T. Baroda (Canada) Ltée d/b/a/ BetUS is a limited company licensed to do business in Canada with its principal office located at 4480 chemin de la côte-de-Liesse, Bureau 110-33, Mont-Royal, Québec City, H4N 2R1, Québec, Canada and an additional office located at the Kahnawake Reservation, Québec, Canada.

11. Upon information and belief, Defendant AngelCiti Entertainment, Inc. is a Nevada corporation with its principal office located at 9000 Sheridan Street, Suite 7, Pembroke Pines, Florida 33024.

JURISDICTION AND VENUE

12. This Court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332. The matter in controversy exceeds the value of $75,000, exclusive of interest and costs. This Court has supplemental jurisdiction over all other claims asserted herein under 28 U.S.C. § 1367(b).

13. This Court has personal jurisdiction over BetUS and AngelCiti pursuant to N.Y.C.P.L.R. §§ 301 and 302 (McKinney 2001). By continuously soliciting business from New York residents on the Internet through a website, and, upon information and belief, accepting payment from New York residents, delivering cash winnings to New York residents and in other ways, BetUS and AngelCiti have transacted business in New York and have wrongfully caused the NFLPA and PLAYERS INC substantial injury in the State of New York. BetUS and AngelCiti specifically target New York sports fans through the BetUS.com website and promotional materials. BetUS and AngelCiti also derive substantial revenue from interstate and international commerce. By their actions, BetUS and AngelCiti have done significant damage to the NFLPA and PLAYERS INC. Accordingly, BetUS and AngelCiti should reasonably have expected their actions to have consequences in New York.

14. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(d) because an alien entity may be sued in any district. Moreover, venue is proper pursuant to 28 U.S.C. §§ 1391(a) and 1391(c) because a substantial part of the events giving rise to the claims arose in this District and because BetUS and AngelCiti are subject to personal jurisdiction in this District.

PLAINTIFFS' EXCLUSIVE GROUP LICENSING RIGHTS

15. Under paragraph 4(b) of the collectively bargained NFL Player Contract, the vast majority of NFL Players expressly assign to the NFLPA all of their "group licensing" rights, as follows:

> Player hereby assigns to the NFLPA and its licensing affiliates, if any, the exclusive right to use and to grant to persons, firms, or corporations (collectively, "licensees") the right to use his name, signature facsimile, voice, picture, photograph, likeness, and/or biographical information (collectively "image") in group licensing programs. Group licensing programs are defined as those licensing programs in which a license utilizes a total of six (6) or more NFL player images on or in conjunction with products (including, but not limited to, trading cards, clothing, videogames, computer games, collectibles, internet sites, fantasy games, etc.) that are sold at retail or used as promotional or premium items. . .The terms of this subparagraph apply unless, at the time of execution of this contract, Player indicates by striking out this subparagraph (b) and marking his initials adjacent to the stricken language his intention not to participate in the NFLPA Group Licensing Program. . . . (emphasis added).

A copy of the NFL Player Contract is annexed hereto as Exhibit B.

16. The NFLPA holds such rights in connection with almost every NFL player. These group licensing rights are then licensed to PLAYERS INC, which has the right to enter into licensing contracts for products, services, and sponsors.

17. In addition to the NFL Player Contract, NFL Players execute separate Group Licensing Assignments ("GLAs"), which are agreements between each player and the NFLPA, under which the NFL Players' group licensing rights are assigned to the NFLPA. The NFLPA obtains the group licensing rights of the NFL Players through the NFL Player Contract, the GLA, or both. A copy of a sample GLA is annexed hereto as Exhibit C.

18. Among other things, the GLA provides, in relevant part, that:

> The undersigned player, a member of the National Football League Players Association ("NFLPA"), hereby assigns to the NFLPA and its licensing affiliates, if any, the exclusive right to use and to grant to persons, firms, or corporations (collectively, "licensees") the right to use his name, signature facsimile, voice, picture, photograph, likeness, and/or biographical information (collectively, "image") in group licensing programs. (Emphasis added).

19. The GLA also explicitly defines "group licensing programs":

> Group licensing programs are defined as those licensing programs in which a licensee utilizes a total of six (6) or more NFL player images in conjunction with or on products that are sold at retail or used as promotional or premium items. (Emphasis added).

20. The GLA obligates the NFLPA to use its best efforts "to ensure that no entity engages in a group licensing program without first obtaining a license from the NFLPA."

21. The GLA provides that it shall be construed under New York law.

22. Currently, PLAYERS INC grants licenses to hundreds of companies in the United States and throughout the world to use various aspects of its group licensing rights in connection with commercial products, including fantasy football and other interactive games, websites, trading cards, memorabilia, and apparel. PLAYERS INC earns royalties from these licenses. The commercial validity and propriety of Plaintiffs' licensing rights have been confirmed in federal court. See Gridiron.com v. National Football League, Player's Association, Inc. & National Football League Players, Inc., 106 F. Supp.2d 1309 (S.D. Fla. 2000).

THE BETUS WEBSITE: www.betus.com

23. Upon information and belief, the Costa Rican and Canadian BetUS entities, controlled by AngelCiti, jointly operate a gambling website, located at www.betus.com (the "Website"), that offers betting on sports. The Website uses the Images of six or more NFL Players, including NFL Players who have executed both an NFL Player Contract and a GLA. Among other things, the Website exploits the photographs, names, and likenesses of NFL Players to promote its online betting services. The display of NFL Player Images by BetUS and AngelCiti in connection with its gaming operations violates the exclusive right of the NFLPA and PLAYERS INC to use the names or likenesses of six (6) or more NFL Players as licensed to the NFLPA and PLAYERS INC by the NFL Players through the GLA and the NFL Player Contract.

24. The Website begins at a central "homepage" that exhorts visitors to subscribe to its online gambling services: "We're committed to helping you take your sports betting game to the next level. As a result, you'll play this NFL Football, NCAA Football, and NBA Basketball season on the most advanced and easy-to-use sportsbook and online gambling interface in the business. You'll enjoy loads of free sports picks, sports betting articles, wagering advice, free contests, and unmatched membership benefits—we'll help put you ahead of the game before you even start playing. Join the BetUS team today and start playing like a pro!" A rotating series of photographs, some of which feature NFL Players, serve as a backdrop. See Screenshot of BetUS.Com Homepage, annexed hereto as Exhibit D.

25. The Member Benefits page of the Website boasts an image of six NFL Players in a huddle, with the slogan, "You're a winner even before you've made your

first bet online" emblazoned on the screen. See Screenshot of BetUS.Com Member Benefits Page, annexed hereto as Exhibit E.

26. The names of NFL Players are listed in conjunction with injuries and sports statistics. See Screenshot of BetUS.Com NFL Team Statistics, annexed hereto as Exhibit F.

27. Moreover, BetUS' corporate brochure is replete with Images of NFL Players, including Tom Brady, Akili Smith, Vince Young, and Peyton Manning. See Exhibit A, at 3, 7, 9, 11, 13, 19, and 21.

28. Although not exhaustive, the above list amply illustrates that, through the Website and the dissemination of promotional materials, BetUS and AngelCiti use six or more NFL Player Images as defined in the GLA.

DAMAGE CAUSED BY BETUS AND ANGELCITI

29. As attested to in the foregoing paragraphs, the group licensing business of PLAYERS INC has become an extremely profitable venture that is at the core of PLAYERS INC's and the NFLPA's very existence. However, the success of the group licensing business is not attributable solely to the personal achievements of, and personas created by, the NFL Players themselves. Rather, the current success and popularity of the group licensing business is due, in large part, to the skillful and professional manner in which the NFLPA, and then PLAYERS INC, have managed and safeguarded the NFL Players' exclusive group licensing rights.

30. By using attributes belonging to the NFL Players on the BetUS website and in their promotional materials without authorization from the NFLPA or PLAYERS INC, BetUS and AngelCiti have caused, are causing, and threaten to cause economic damage to Plaintiffs by diverting business from authorized licensees, depriving the Plaintiffs of licensing fees to which they are entitled for use of their exclusive group licensing rights, and by creating potential and actual conflicts with already existing licensees for Internet use. In addition, by engaging in the unauthorized use of NFL Players' attributes on the BetUS website, BetUS and AngelCiti are usurping the goodwill associated with, and the commercial value of, the NFLPA's and PLAYERS INC's exclusive group licensing rights—goodwill and value which the NFLPA and PLAYERS INC have carefully developed, nurtured, and protected through the investment of significant time, energy, money, and resources over many years.

BETUS' AND ANGELCITI'S REFUSAL TO REMOVE INFRINGING IMAGES

31. After becoming aware of the unauthorized use of NFL Player Images by BetUS and AngelCiti, on June 22, 2006, PLAYERS INC wrote to AngelCiti to inform that the BetUS website's use of NFL Player Images was unauthorized and required a license. PLAYERS INC demanded that BetUS and AngelCiti cease and desist from using the NFL Player Images and confirm that such use had ceased within five days. See Letter from Joseph A. Nahra, Esq. to AngelCiti Entertainment, Inc., dated June 22, 2006, annexed hereto as Exhibit G.

32. Having received no response from AngelCiti, PLAYERS INC wrote directly to BetUS in Costa Rica on September 8, 2006 and insisted that it refrain from using the NFL Player Images on its website. PLAYERS INC requested confirmation that BetUS had stopped engaging in infringing activities within five days. See Letter from Joseph A. Nahra, Esq. to Mike Foreman, dated September 8, 2006, annexed hereto as Exhibit H.

33. On September 11, 2006, PLAYERS INC renewed its request that AngelCiti cease and desist using the NFL Player Images. PLAYERS INC threatened to pursue legal remedies unless AngelCiti immediately removed the NFL Player Images from the BetUS website. See Letter from Joseph A. Nahra, Esq. to George Gutierrez, dated September 11, 2006, annexed hereto as Exhibit I.

34. To date, neither AngelCiti nor BetUS has acknowledged—let alone responded to—PLAYERS INC's letters. Indeed, notwithstanding having been advised several times in writing that its activities violated and continue to violate Plaintiffs' exclusive group licensing rights, BetUS and AngelCiti persist in using the Images of six or more NFL Players on the Website and in promotional materials, including NFL Players in connection with whom Plaintiffs' hold exclusive group licensing rights.

I.
FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

35. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 34 as if fully set forth herein.

36. An actual controversy within this Court's jurisdiction exists between Plaintiffs and BetUS and AngelCiti in that:

a. Plaintiffs have demanded that BetUS and AngelCiti cease and desist from using six or more NFL Player Images, where Plaintiffs hold the exclusive group licensing rights in connection with at least one of such NFL Players, on the BetUS website and in its promotional materials in violation of exclusive group licensing rights held by the Plaintiffs;

b. To date, BetUS and AngelCiti have refused to cease and desist from their infringing activities;

c. The course of conduct taken by BetUS and AngelCiti has created a reasonable apprehension that the exclusive group licensing rights held by the Plaintiffs will continue to be violated.

37. Accordingly, Plaintiffs are entitled to a declaratory judgment that BetUS' and AngelCiti's use of six or more NFL Player Images, where Plaintiffs hold the exclusive group licensing rights in connection with at least one of such NFL Players, on the BetUS website and in its promotional materials violates Plaintiffs' exclusive group licensing rights.

II.
SECOND CLAIM FOR RELIEF
(The Statutory Right of Privacy)

38. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 37 as if fully set forth herein.

39. Plaintiffs are the exclusive assignees of NFL Players' rights to use or license their Images in programs that utilize six or more NFL Player Images on or in conjunction with products that are sold at retail or used as promotional or premium items.

40. The use by BetUS and AngelCiti of the NFL Player Images, for whom Plaintiffs hold exclusive group licensing rights, on the BetUS website and in its promotional materials is so directly connected with the commercial sponsorship of Defendants' online betting enterprises as to constitute a use for advertising purposes or for a commercial purpose for which written consent of the Plaintiffs, as the exclusive assignees of NFL Players' rights to use or license their Images in group licensing programs, is required by N.Y. CIV. RIGHTS § 50 (McKinney 1992).

41. Plaintiffs have been injured by virtue of BetUS' and AngelCiti's use of NFL Player Images in violation of Plaintiffs' exclusive rights under N.Y. CIV. RIGHTS § 50 (McKinney 1992) and are entitled to recover compensatory damages for such injury, including but not limited to an amount that would have been a reasonable royalty, as well as exemplary damages under N.Y. CIV. RIGHTS § 51 (McKinney 1992).

42. Plaintiffs are also entitled to equitable relief under N.Y. CIV. RIGHTS § 51 (McKinney 1992) in the form of an injunction prohibiting BetUS and AngelCiti from using the Images of NFL Players in connection with whom Plaintiffs hold exclusive group licensing rights on the BetUS website and in its promotional materials and from taking any other action in violation of Plaintiffs' exclusive rights.

43. Plaintiffs are entitled to recover all profits of BetUS and AngelCiti attributable to its violation of Plaintiffs' exclusive rights under N.Y. CIV. RIGHTS § 51 (McKinney 1992).

III.
THIRD CLAIM FOR RELIEF
(Injunction)

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 43 as if fully set forth herein.

45. Plaintiffs will suffer irreparable injury unless an injunction is issued barring BetUS and AngelCiti from using six or more NFL Player Images or taking any other action inconsistent with or in violation of Plaintiffs' exclusive group licensing rights.

46. Plaintiffs have no adequate remedy at law.

47. BetUS and AngelCiti will suffer no cognizable damage if such an injunction is issued because BetUS and AngelCiti have no right to violate the exclusive licensing rights of Plaintiffs.

48. The issuance of the requested injunction would not be adverse to public interest.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for the following relief:

1. A declaration that the use by BetUS and AngelCiti of the Images of NFL Players in connection with whom Plaintiffs hold exclusive group licensing rights violates Plaintiffs' exclusive group licensing rights;

2. An award of compensatory and punitive damages to Plaintiffs in an amount to be determined at trial;

3. A permanent injunction prohibiting BetUS and AngelCiti from using the Images of NFL Players on the BetUS website and in its promotional materials in

connection with which Plaintiffs hold exclusive group licensing rights, or from taking any other action that is inconsistent with, or in violation of, Plaintiffs' exclusive group licensing rights.

4. An award in the nature of disgorgement of all profits of BetUS and AngelCiti attributable to its violations of Plaintiffs' exclusive rights; and

5. Such additional and further relief, at law and in equity, as the Court deems to be just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
January 26, 2007

Respectfully submitted,

WEIL, GOTSHAL & MANGES LLP

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